

**International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO and its Local 825 and Central Industries, Inc.** Cases 14-CB-7118, 14-CB-7213, and 14-CB-7214

May 14, 1991

**DECISION AND ORDER**

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

**STATEMENT OF THE CASES**

On July 25, 1990, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO and its Local 825 (collectively the Respondent), and the General Counsel of the National Labor Relations Board entered into a settlement stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States court of appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The settlement stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the settlement stipulation.<sup>1</sup>

<sup>1</sup> Central Industries has declined to enter into the settlement stipulation and on October 2, 1990, filed a statement with the Board objecting to the settlement on the grounds that the Respondent allegedly has continued to engage in unlawful conduct. It submitted four affidavits from individuals purporting to show that nails continue to be found in Central Industries' driveway causing damage to employees' vehicles, and that persons (including one striker) continue to trespass and spray paint its building. A review of those affidavits, however, fails to establish with any degree of certainty that the Respondent or its agents were responsible for the alleged misconduct.

Contrary to our dissenting colleague, we see no reason to reject the parties' settlement stipulation merely because it contains a nonadmission clause. Our colleague reasons that because the Respondent was twice found to be in contempt of court orders enjoining them from engaging in the type of conduct allegedly engaged in here, and because the possibility exists that they continued to engage in misconduct after signing the settlement agreement, approval of the settlement stipulation with the nonadmissions clause is inappropriate. It is true that the Respondent has been found in contempt, most recently by court order dated April 13, 1990, for conduct engaged in on December 11, 1989; however, a respondent's recidivism does not constitute a bar to approval by the Board of a settlement agreement containing a nonadmissions clause. See *Containair Systems Corp. v. NLRB*, 521 F.2d 1166 (2d Cir. 1975); *Philadelphia Building Trades Council (Wohlsen Construction)*, 279 NLRB 1242 (1986). Our colleague's suggestion that the Respondent may have engaged in misconduct after executing the settlement agreement on July 18, 1990, lacks evidentiary support. The only evidence in this regard consists of the four affidavits submitted by the Employer which, as previously indicated and as our colleague readily admits, fails to establish with any degree of certainty that the Respondent or its agents were responsible for the misconduct described therein. Further, in *Mine Workers (Island Creek Coal)*, 302 NLRB 467 (1991),

On the basis of the settlement stipulation and the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. THE EMPLOYER'S BUSINESS**

Central Industries, a corporation duly authorized to do business under the laws of the State of Illinois, maintains an office and place of business in Lawrenceville, Illinois (the Lawrenceville, Illinois facility), where it is engaged in the manufacture and nonretail sale of electrical wire harnesses and junction boxes. Central Industries, in the course and conduct of its business operations during the 12-month period ending March 31, 1990, which period is representative of its operations at all times material, sold and shipped from its Lawrenceville, Illinois facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Illinois. Central Industries is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO and its Local 825 are labor organizations within the meaning of Section 2(5) of the Act.

**ORDER**

On the basis of the above findings of fact, the settlement stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that the Respondent, International Union of Electronic Electrical Salaried, Machine and Furniture Workers, AFL-CIO and its Local 825, its officers, agents, representatives, servants, employees, attorneys, and all members and persons acting in concert or participation with it, shall

**1. Cease and desist from**

(a) Causing, directing, establishing, or maintaining mass demonstrations, mass picketing, and blocking of ingress and egress at the entrances to Central Industries' Lawrenceville, Illinois facility.

(b) Converging on, surrounding, shaking, and striking vehicles attempting to enter or leave Central Industries' Lawrenceville, Illinois facility.

(c) Throwing or placing loose nails into the driveway or roads used to enter Central Industries'

the Board addressed our colleague's concern that the inclusion of a nonadmissions clause in a settlement stipulation could be read to suggest that the respondent had not engaged in any wrongdoing. For the reasons stated in *Island Creek*, we find our colleague's concern here unwarranted. Finally, we believe that on balance, the remedy provided by the parties' settlement stipulation, including a court-enforceable broad cease-and-desist order and wide dissemination of the Board's notice, fully effectuates the purposes and policies of the Act and adequately balances the risks of further litigation against an acceptable closure of this case by settlement.

Lawrenceville, Illinois facility, throwing rocks, pieces of cinder block, boards with protruding nails, burning lumber, and other projectiles at employees, repair personnel, and customers of Central Industries and at vehicles and other property belonging to or operated by them.

(d) Assaulting employees and other individuals in the presence of employees.

(e) Verbally threatening and taunting employees and other individuals in the presence of employees.

(f) Trespassing onto Central Industries' Lawrenceville, Illinois facility and banging on the doors to the facility.

(g) Flipping over vehicles, attempting to push over street lights, smashing street lights and other outdoor lights, cutting power cables, damaging or destroying telephone lines and other equipment that serve Central Industries' Lawrenceville, Illinois facility.

(h) Displaying pistols in the presence of security guards or employees employed by Central Industries or discharging said pistols in their presence.

(i) Smashing the glass of, or otherwise damaging, employees' vehicles and Central Industries' doors and windows and other property and equipment.

(j) Spitting on employees of Central Industries.

(k) Throwing or shooting metal projectiles at employees' automobiles, the Employer's van, and at Central Industries' Lawrenceville, Illinois facility.

(l) Making threats against applicants, waving knives at applicants, or following employees or applicants.

(m) In any other manner, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at Respondent's business office and meeting halls in the vicinity of Central Industries' facility copies of the attached notice to members. Copies of the notice on forms provided by the Regional Director for Region 14, after being signed by Respondent's representatives, shall be posted by the Respondent immediately upon receipt thereof and be maintained by Respondent for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other materials.

(b) Mail to the Regional Director for Region 14 signed copies of the notice for posting, if Central Industries is willing, at Central Industries' Lawrenceville, Illinois facility, in places where notices to employees are customarily posted. Copies of the notice, on forms provided by the Regional Director for Region 14, after having been signed by the Respondent's representa-

tives, shall forthwith be returned to the Regional Director for such posting by Central Industries.

(c) Distribute to all Respondent's officers, agents, pickets, and members employed by Central Industries a copy of the Board's Order and attached notice and a written directive to the officers, agents, pickets, and members to refrain from any conduct that has been restrained and enjoined by the Board.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER OVIATT, dissenting.

On October 25, 1989, United States District Judge William L. Beatty adjudged the Respondent and its agents, Larry Adams and William Carrell (both pickets), in civil contempt for noncompliance with the court's June 16, 1989 order granting a temporary injunction. Judge Beatty found that the Respondent had failed to limit the number of pickets at two entrances to the Employer's facility to three pickets per entrance and to limit the number of persons congregating at its strike camp to nine. He also found that the Respondent, acting through Adams, threatened job applicants at the facility with violence and waved a knife at them. Further, Judge Beatty found that the Respondent, through Carrell, caused a projectile to smash the window of a van used by the Employer to transport employees as the van left the facility. He adjudged the Respondent in contempt for the actions of its agent, Gerald Love (a picket), who threw nails in the path of an employee's car as the employee left the facility, and for the actions of its agent, Julie Moon (a picket), who threw nails beneath a truck driven by an employee at the facility.

On March 23, 1990, at the conclusion of a show cause hearing on a second petition for adjudication in civil contempt, Judge Beatty found that the Respondent and Ed Tate (a strike captain/picket) were in contempt for displaying and discharging a firearm, and that an unidentified agent of the Respondent was in contempt for identical conduct.

On July 25, 1990, about 4 months after the March 1990 contempt adjudication and 9 months after the October 1989 contempt findings, the Respondent and the General Counsel entered into the instant settlement stipulation, over the opposition of the Charging Party Employer. Evidence has been presented to us that, although it pertains to conduct that has not with certainty been established as the responsibility of the Respondent or its agents, suggests caution in approving such a settlement in the circumstances of this case. Specifically, the affidavit of security guard Lonnie Padgett avers that on September 21, 1990, Ann Sears, a striking member of the Respondent, sprayed paint on an employee's car. The September 28, 1990 affidavit of employee Garnet S. Wilson avers that in the 6 months

preceding the affidavit employees filed 109 claims for flat tires caused by nails when the employees crossed the picket line. The affidavit of employee Steve Beard avers that on September 18, 1990, he observed that the Employer's building had been spray painted. The September 28, 1990 affidavit of employee Bob Schetzle avers that the presence of nails in the driveway of the facility, and the resulting flat tires, have been virtually daily occurrences. The conduct described in these affidavits is similar to the conduct for which the Respondent was found in contempt.

With this recent history of contumacious conduct and with the possibility that the Respondent may still not be in compliance with court orders enjoining such conduct, I cannot approve a settlement that includes a nonadmission clause. As I indicated in my dissent in *Mine Workers (Island Creek Coal)*, 302 NLRB 468, supra, such a clause could very well be read to suggest that the Respondent has done nothing wrong. In fact, a district court has twice found to the contrary in recent months. If the Board is to exercise independent judgment in reviewing settlements negotiated by others, it must carefully weigh the circumstances under which such settlements are entered into and the language they contain. Having done so, and with due regard for the flexibility that must be given the General Counsel in negotiating settlements, I conclude that I cannot approve this settlement with the nonadmission language in it.

## APPENDIX

### NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

Based on a stipulation providing for consent judgment of the United States Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act we hereby notify our members that

WE WILL NOT cause, direct, establish, or maintain mass demonstrations, mass picketing or blockage of the ingress and egress at the entrances to Central Industries' Lawrenceville, Illinois facility.

WE WILL NOT converge on, surround, shake, and strike vehicles attempting to enter or leave Central Industries' Lawrenceville, Illinois facility.

WE WILL NOT throw or place loose nails into the driveway or roads used to enter Central Industries' Lawrenceville, Illinois facility, nor will we throw rocks, pieces of cinder block, boards with protruding nails, burning lumber, and other projectiles at employees, repair personnel, and customers of Central Industries and at vehicles and other property belonging to or operated by them.

WE WILL NOT assault employees and other individuals in the presence of employees.

WE WILL NOT verbally threaten or taunt employees and other individuals in the presence of employees.

WE WILL NOT trespass onto Central Industries' Lawrenceville, Illinois facility and bang on the doors to the facility.

WE WILL NOT flip over vehicles, attempt to push over street lights, smash street lights and other outdoor lights, cut power cables, damage or destroy telephone lines and other equipment that serve Central Industries' Lawrenceville, Illinois facility.

WE WILL NOT display pistols in the presence of security guards or employees employed by Central Industries nor will we discharge such pistols in their presence.

WE WILL NOT smash the glass of, or otherwise damage, employees' vehicles and Central Industries' doors and windows and other property and equipment.

WE WILL NOT spit on employees of Central Industries.

WE WILL NOT throw or shoot metal projectiles at employees' automobiles, the Employer's van, and at Central Industries' Lawrenceville, Illinois facility.

WE WILL NOT make threats against applicants, wave knives at applicants, or follow employees or applicants.

WE WILL NOT in any other manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

INTERNATIONAL UNION OF ELECTRONIC,  
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FURNITURE WORKERS, AFL-CIO AND  
ITS LOCAL 825